

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

In the Matter of the Search Regarding: No. 4:19-mj-83


19-127-04

**REDACTED APPLICATION FOR
SEARCH AND SEIZURE WARRANT**

I, Adam C. Topping, being duly sworn depose and say:

I am a Special Agent with the Federal Bureau of Investigation, and have reason to believe that within the Facebook, Inc. account fully described in Attachment A, attached hereto and incorporated herein by reference, there is now concealed certain property, namely: that fully described in Attachment B, attached hereto and incorporated herein by reference, which I believe is property constituting evidence of the commission of criminal offenses, contraband, the fruits of crime, or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing criminal offenses, concerning violation of 18 U.S.C. § 875(c).

The facts to support a finding of Probable Cause are contained in my Affidavit filed herewith.


Adam C. Topping, Special Agent
Federal Bureau of Investigation

Sworn to before me, and subscribed in my presence on the 3d day of December, 2019, at Sioux Falls, South Dakota.


VERONICA L. DUFFY
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

In the Matter of the Search Regarding No. 4:19-mj-83

19-127-04

**REDACTED AFFIDAVIT IN
SUPPORT OF SEARCH AND
SEIZURE WARRANT**

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI) assigned to the Sioux Falls, South Dakota, office and I am charged with investigating violations of federal statutes within the District of South Dakota. I have worked as a Special Agent with the FBI for more than 11 years. I have conducted a wide variety of investigations to include international and domestic terrorism, violent crimes, white collar crimes, and crimes in Indian country. The following information is based on investigation solely by the FBI. This Affidavit does not contain the entirety of my knowledge regarding this investigation.

2. Through this affidavit, I am requesting that a search warrant be issued for the following:

Facebook account number: [REDACTED]

Maintained by Facebook, Inc.
1601 Willow Road
Menlo Park, CA 94025

Public sources revealed the above Facebook account number to have corresponding screen name Keith Tw Cournoyer. The above account is hereinafter referred to as Keith Cournoyer's Facebook account.

3. Because this affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that evidence of violations of Title 18 United States Code § 875(c), involving the communication in interstate commerce of a threat to injure the person of another, is present in the information associated with the Facebook account listed in paragraph 2, maintained by Facebook, Inc., 1601 Willow Road, Menlo Park, CA 94025.

4. I have worked with other law enforcement personnel regarding this investigation. The statements contained in this affidavit are based on information that has been provided to me directly or indirectly by witnesses and other law enforcement personnel. The information and conclusions expressed are also based upon my own experience and training as a law enforcement officer, and my personal involvement and knowledge gained during the course of this investigation.

5. I make this affidavit in support of an application for a search warrant for content and records associated with Facebook which are stored at premises owned, maintained, controlled, or operated by Facebook, Inc. The information and accounts to be searched are described in the following paragraphs and in Attachments A and B. This affidavit is made in support of an application for a

search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A) to require Facebook, Inc. to disclose to the government records and other information in its possession pertaining to the subscriber or customer associated with the accounts referenced in this affidavit and further described in Attachment A, including the contents of the communications.

6. I have probable cause to believe that evidence of violations of Title 18 United States Code § 875(c), involving communicating a threat to injure the person of another in interstate commerce, is located within Keith Cournoyer's Facebook account. I have reason to believe that the account will have stored information and communications that are relevant to this investigation, to include evidence of the identity of the account subscriber, communications sent to the account subscriber, and the identities of individuals with whom the account subscriber has communicated. Thus, as outlined below, and based on my training and experience, there is probable cause to believe that evidence, fruits and/or instrumentalities of the aforementioned crime is located in the account.

STATUTORY AUTHORITY

7. The legal authority for this search warrant application is derived from Title 18, United States Code, chapter 121, §§ 2701-11, entitled "Stored Wire and Electronic Communications and Transactional Records Access." 18 U.S.C. § 2703(c)(A) allows for nationwide service of process of search warrants for the contents of electronic communications. Pursuant to 18 U.S.C. § 2703, as amended by the USA PATRIOT Act, Section 220, a government entity may require

a provider of an electronic communication service or a remote computing service to disclose a record or other information pertaining to a subscriber or customer of such service pursuant to a warrant issued using procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation.

TECHNICAL BACKGROUND ON FACEBOOK

8. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

9. Facebook asks users to provide basic contact information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

10. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, to all Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. Facebook accounts also include other account settings that

users can adjust to control, for example, the types of notifications they receive from Facebook.

11. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "Mini-Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

12. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

13. Facebook has a Photos application, where users can upload an unlimited number of albums and photos. Another feature of the Photos application is the ability to "tag" (i.e., label) other Facebook users in a photo or

video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook's purposes, a user's "Photoprint" includes all photos uploaded by that user that have not been deleted, as well as all photos uploaded by any user that have that user tagged in them.

14. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient's "Inbox" on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. Private message are saved based on user discretion. If the user has deleted any messages at any point during their activity, Facebook does not keep records of those messages.

15. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs ("blogs"), or to import their blogs from other services, such as Xanga, LiveJournal, and Blogger.

16. The Facebook Gifts feature allows users to send virtual "gifts" to their friends that appear as icons on the recipient's profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other "pokes," which are free and simply result in a notification to the recipient that he or she has been "poked" by the sender. Facebook also has a Marketplace feature, which allows users to post free

classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

17. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications on the Facebook platform. When a Facebook user accesses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

18. Facebook uses the term "Neoprint" to describe an expanded view of a given user profile. The "Neoprint" for a given user can include the following information from the user's profile: profile contact information; Mini-Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications.

19. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

20. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their account, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well records of any actions taken by the provider or user as a result of the communications.

21. Therefore, the computers of Facebook are likely to contain all the material just described, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and account application.

PROBABLE CAUSE

22. On November 4, 2019, Gavin Little was sentenced in United States District Court, District of South Dakota, Southern Division, after being adjudicated guilty of 18 U.S.C. §§ 1201 and 2, kidnapping, which occurred on November 25, 2018 involving victim Keith Cournoyer. Gavin was sentenced to 210 months of imprisonment in the custody of the United States Bureau of Prisons. I was present during the sentencing hearing and witnessed many family members and friends of both the defendant and victim in attendance. As part of

the FBI investigation of Gavin Little, I am aware that the families of Gavin and Keith are related and that the sentencing of Gavin to imprisonment would create a dramatic increase in tension between family members. The increase in tension was evidenced during the hearing by aggressive words spoken by members of both families, and in particular by Keith's aunt Jean Tiger who reported to me that a member of Gavin's family made a verbal threat to shoot "her" upon their return to Wagner, South Dakota. The identity of "her" in that instance is unknown; however, it is assessed that the statement was made in light of the prosecution and sentencing of Gavin.

23. On November 5, 2019, at 8:35 AM, I received two multimedia messages on my FBI issued cellular telephone from Keith Cournoyer. The messages contained screenshots of Keith's cellular telephone depicting his Facebook account and three messages sent from a Facebook account using screen name Kyle Gullikson. It was apparent that the same account with screen name Kyle Gullikson sent all three messages as the profile picture for each message was the same image. Two of the Facebook messages appeared to be publicly viewable comments made by Kyle, and the third appeared to be a private message sent by Kyle directly to Keith. The publicly viewable comments read, "Pussy, I will see you, your [sic] a great actor," and "This isn't over bitch." The private message read, "sup punk, your [sic] dead." Keith responded at 8:33 AM in a private message back to Kyle that read, "Yeah you guys obviously don't care about [REDACTED]." [REDACTED] is Keith's young daughter who is also related to Gavin's family.

24. Shortly after I received the multimedia messages from Keith, I spoke with him via telephone to address his concerns. Keith stated that Kyle is Gavin's half-brother and that he considered the threat to be a serious matter. Keith was concerned for his safety and agreed to meet me in-person that morning at the FBI office in Sioux Falls, South Dakota.

25. On November 5, 2019, I conducted an in-person interview of Keith Cournoyer. Keith accessed his Facebook account on his cellular telephone and showed me the messages sent by Kyle Gullikson. Keith gave his permission for me to take photographs of his telephone while the Facebook messages were displayed. Keith stated that the comment which read, "This isn't over bitch," had since been deleted; however, the other comment and the private message were still present. Time stamps on the Facebook messages indicated that Kyle had sent the publicly viewable comments in the 1:00 AM hour on November 5, 2019, and the private message at 1:19 AM the same day. Keith stated that he considered the threat made by Kyle a serious matter, and he was sincerely concerned for his safety and for that of his family. Keith expressed his concern that other members of Gavin's family could also attempt to exact revenge against him because they blamed him for Gavin's imprisonment. Keith also stated his desire to relocate to Canada in attempt to distance himself and his family from the threat. Regarding the familial relationship between Gavin and Kyle, Keith stated that they have the same father, Randy Little.

26. On several occasions prior to November 5, 2019, Keith had expressed concerns for his safety. On September 12, 2019, an email was sent

by Traci Smith, the public defender for Minnehaha County, to Assistant United States Attorney (AUSA) Jeff Clapper. Traci wrote that she had met with Keith regarding a non-case related citation he had received prior to him being assaulted in November 2018. During the meeting, Keith told Traci that he was concerned for his safety and that he felt like he was being threatened by people involved in the federal case. On June 17, 2019, Keith's mother, Darla Cournoyer, sent a text message to me on my FBI issued cellular telephone requesting information on victim/witness protection and relocation programs that might be available to Keith. Darla wrote that Keith was living in fear of "getting finished off" and wanted to relocate to Canada with his family.

27. Open source research of Facebook on November 5, 2019 revealed Facebook account number [REDACTED] as being active, having corresponding screen name Kyle Gullikson, and having corresponding user name [REDACTED]. The profile picture uploaded by the user of the account appeared to depict a Native American male fitting the known age of Kyle Gullikson. Publicly available information displayed in the account revealed the user attended Marty Indian High School, was from Marty, South Dakota, and lived in Marty, South Dakota. The user also noted his birthday on the account to be [REDACTED], 1991, which is identical to that of Kyle Gullikson. Based on my knowledge and experience investigating crimes in Indian country, I know that Marty, South Dakota, is within the exterior boundaries of the Yankton Sioux Indian Reservation, and is the same reservation affiliated with Gavin Little and Keith Cournoyer.

28. On November 7, 2019 a search warrant was served on Kyle Gullikson's Facebook account ordering the production of records related to this matter. On November 25, 2019, Facebook provided records which indicate that Kyle likely deleted the message to Keith, "sup punk, your [sic] dead," as the message is not evident in the records; however, Keith's response, "Yeah you guys obviously don't care about Kaylin" is evident. Kyle's public comment, "Pussy, I will see you, your [sic] a great actor," is evident; however, his other public comment, "This isn't over bitch," appears to have been deleted.

29. On November 26, 2019, I spoke with Keith Cournoyer via telephone. Keith confirmed that he had not deleted the message he had received from Kyle. From my knowledge of Facebook, I know that the deletion of a Facebook message by one party of a conversation does not cause the message to be deleted from the other party's account, therefore, a review of Keith's Facebook account should reveal evidence of the threatening message sent by Kyle Gullikson.

CONCLUSION

30. Based on the above information, I believe that there is probable cause to believe that evidence relating to violations of Title 18 U.S.C. § 875(c), involving the communication in interstate commerce of a threat to injure the person of another, is present in the information associated with the Facebook account of Keith Cournoyer, account number [REDACTED]. Probable cause is based on the following:

- a. A Facebook account apparently used by Kyle Gullikson existed and was active on November 5, 2019;


- b. A Facebook account used by Keith Cournoyer existed and was active on November 5, 2019;
- c. Messages indicating threats of violence were sent from Kyle Gullikson's Facebook account to Keith Cournoyer's Facebook account on November 5, 2019, and those threats were considered of a serious nature;
- d. The messages sent via Facebook were transmitted in interstate commerce.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

31. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the Government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

32. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711(3) and 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A). Specifically, the Court is "a district court of the United States . . . (including a magistrate judge of such a court)... that - has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(I).

33. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.


Adam C. Topping, Special Agent
Federal Bureau of Investigation

Sworn to before me, and subscribed in my presence on the 3rd day of
December, 2019, at Sioux Falls, South Dakota.


VERONICA L. DUFFY
United States Magistrate Judge

REDACTED ATTACHMENT A

DESCRIPTION OF PROPERTY TO BE SEARCHED

This warrant applies to information associated with the following Facebook account:

Account Number: [REDACTED]

which is stored at premises owned, maintained, controlled, or operated by Facebook, Inc., a social networking website provider headquartered at 1601 Willow Road, Menlo Park, CA 94025.

REDACTED ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook, Inc.

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user account listed in Attachment A: Such information should include the below-described content of the subject accounts for the period November 1, 2019 to November 10, 2019:

- a. All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers;
- b. All activity logs for the account and all other documents showing the user's activity to include login/logout information, corresponding IP addresses, and other Facebook activities; and
- c. All records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending "Friend" requests.

II. Information to be seized by the government

Upon receipt of the information from Facebook, government-authorized personnel will review it to locate and seize all information described above in Section I of Attachment A that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18 U.S.C. § 875(c), including information

pertaining to threats to injure Keith Cournoyer made on November 5, 2019.

Before reviewing data from the electronic storage media or electronic stored information seized pursuant to this warrant for purposes unrelated to this investigation, the Government agrees to request another search warrant from the court.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

In the Matter of the Search Regarding No. 4:19-mj-83

19-127-04

**REDACTED SEARCH AND
SEIZURE WARRANT**

TO: ANY AUTHORIZED LAW ENFORCEMENT OFFICER

An application by a federal law enforcement officer or an attorney for the government requests the search of the Facebook, Inc. account fully described in Attachment A, attached hereto and incorporated herein by reference.

I find that the affidavit, or any recorded testimony, establish probable cause to search and seize the property described above, and that such search will reveal evidence of the commission of criminal offenses, contraband, the fruits of crime, or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing criminal offenses, concerning violation of 18 U.S.C. § 875(c), as fully described in Attachment B, attached hereto and incorporated herein by reference.

YOU ARE COMMANDED to execute this warrant on or before

12-17-19 (not to exceed 14 days)

☒ in the daytime - 6:00 a.m. to 10:00 p.m.

☐ at any time in the day or night as I find reasonable cause has been established.


Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to the undersigned Judge.

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized,

- ☐ for _____ days (*not to exceed 30*).
- ☐ until, the facts justifying, the later specific date of _____.

12-3-19 at 3:15pm CST at Sioux Falls, South Dakota
Date and Time Issued


VERONICA L. DUFFY
United States Magistrate Judge

REDACTED ATTACHMENT A

DESCRIPTION OF PROPERTY TO BE SEARCHED

This warrant applies to information associated with the following Facebook account:

Account Number: [REDACTED]

which is stored at premises owned, maintained, controlled, or operated by Facebook, Inc., a social networking website provider headquartered at 1601 Willow Road, Menlo Park, CA 94025.

REDACTED ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook, Inc.

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user account listed in Attachment A: Such information should include the below-described content of the subject accounts for the period November 1, 2019 to November 10, 2019:

- a. All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers;
- b. All activity logs for the account and all other documents showing the user's activity to include login/logout information, corresponding IP addresses, and other Facebook activities; and
- c. All records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending "Friend" requests.

II. Information to be seized by the government

Upon receipt of the information from Facebook, government-authorized personnel will review it to locate and seize all information described above in Section I of Attachment A that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18 U.S.C. § 875(c), including information

pertaining to threats to injure Keith Cournoyer made on November 5, 2019.

Before reviewing data from the electronic storage media or electronic stored information seized pursuant to this warrant for purposes unrelated to this investigation, the Government agrees to request another search warrant from the court.